

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KEVIN BRIAN MITCHELL,

Plaintiff,

v.

Case No. 17-C-920

ANDREW MOUNGEY, et al.,

Defendants.

ORDER

Plaintiff Kevin Brian Mitchell filed this 42 U.S.C. § 1983 lawsuit, alleging that Defendants violated his civil rights. On April 25, 2018, the court screened Mitchell's amended complaint and allowed him to proceed on an excessive force claim against defendants Moungey, Burns, Kappel, and Johnson as well as a deliberate indifference claim against Kacyon. Presently before the court are Mitchell's motion to compel and motion to hold Defendants, Defendants' attorney, and Waupun Correctional Institution's legal coordinator in contempt and to sanction them. Mitchell seeks to compel the production of video footage related to his claims, specifically footage of Defendants escorting Mitchell to the restrictive housing unit (RSU) on April 10, 2017.

In response, Defendants submitted a declaration from Yana Pusich, Waupun Correctional Institution's Corrections Program Supervisor, stating that, although she located five videos from April 10, 2017 that showed the staff-assisted search in RSU, she was unable to locate a video that showed Mitchell's escort to RSU. Pusich Decl. ¶ 7, ECF No. 38. Mitchell reviewed these five videos on February 23, 2018. *Id.* ¶ 8. Captain Robert Rymarkiewicz, the officer responsible for conducting an investigation into Mitchell's claims, declared that any footage that may have shown

Mitchell's escort to RSU was not saved and was ultimately recorded over before any investigation began due to the limited storage space on the digital video recorder. Rymarkiewicz Decl. ¶ 6, ECF No. 39.

These declarations establish that video footage of Mitchell's escort to RSU no longer exists. The court cannot compel Defendants to produce something they do not have. Accordingly, Mitchell's motions will be denied.

IT IS THEREFORE ORDERED that Mitchell's motion to compel (ECF No. 21) is **DENIED**.

IT IS FURTHER ORDERED that Mitchell's motion to hold Defendants, Defendants' attorney, and WCI legal coordinator in contempt and to sanction them (ECF No. 26) is **DENIED**.

Dated this 7th day of May, 2018.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court